mitted, practically on all hands, that there is no property in dead bodies, and yet equity has frequently enjoined interference with them. 15 HARV. LAW REV. 64; *Pierce* v. *Swan Point Cemetery*, 10 R. I. 227; *Meagher* v. *Driscoll*, 99 Mass. 281.

It therefore seems superfluous for the court to declare further that the plaintiff's right to control the publication of her likeness may, if necessary, be considered as property. Extreme as the views of the court may appear, it is supported by some *dicta*. *Corliss* v. *Walker*, 64 Fed. Rep. 280, 282; Gray, J., dissenting, in *Schuyler* v. *Curtis*, *supra*. Moreover, it is not apparently inconsistent with the numerous cases in which the necessity of property as a basis of jurisdiction has been laid down. The term, property, is nowhere clearly defined, and seems to mean no more than pecuniary interest as distinguished from private feelings. Kerr, Injunctions, p. 498; *Emperor of Austria* v. *Day & Kossuth*, 2 De G., F., & J. 217, 241. Moreover, the "property right" need not be presently profitable; it is enough if it may be so in the future. *Prince Albert* v. *Strange*, 2 De G. & S. 652, 694; *Gee* v. *Pritchard*, 2 Swanst. 402. When the word has been extended thus far it seems quite possible to claim its protection for the right to privacy. Almost any right may become pecuniarily profitable to its possessor. Again, if transferability be considered the essential of property, the right in question, granting its existence, seems in its nature quite as assignable as the right in private letters.

If, however, the *dictum* of the principal case were accepted, it might be argued that a man's property right in his features ought to survive him, and the case of *Schuyler* v. *Curtis*, *supra*, generally regarded as deciding the contrary, would be somewhat weakened. No one denies the desirability of a remedy in this class of cases. If it is to be given without legislation by the courts this should not be done by taking advantage of an elastic phrase, which already means so much that it means nothing.

STATUTORY RIGHTS OF ADVERTISERS. — A recent unreported Massachusetts decision, *Martin* v. *Owens Bros.*, has directed attention to a peculiar section of the trademark statute of this Commonwealth, in which provision is made for the registering of a "form of advertisement." Forms of advertisements have long been protected at common law under the rules of unfair competition, in which fraudulent intent, liability to deceive, and probable damage to the complainant are essential, as well as certain technical requirements by analogy to trademarks; but this statute omits all the foregoing requisites, and purports to afford protection to a bare form of advertisement, as such, without pretence of requiring it to indicate origin, proprietorship, or anything arbitrary or distinctive.

The opinion of the court was rendered by Judge Loring, who, after explaining the nature of the advertising device, a "Lucky Penny Pocket Piece," and pointing out that the defendant had deliberately copied the plaintiff's article to get the benefit of the latter's trade, continued: —

"The plaintiff is trying to get the monopoly of manufacturing and selling, as a piece of merchandise, what is called by the counsel an advertising device, and what, to my mind, would be more accurately described as an article of the nature of a 'throw-in' to attract customers. It is used in the same way that advertisements are used, to a certain extent, but does not advertise the plaintiff's goods, profession, work, or anything of

that kind, but is sold to others. The only way that you can get a monopoly on an article of manufacture, as rightly stated by the defendant, is by a patent.

"It is contended that the plaintiff originated certain phrases, . . . and that these phrases have caught the fancy of the people, so that they have become useful to the plaintiff as a means of selling his goods, and that by registering these phrases as an advertising device or 'form of advertisement,' under this statute, he has obtained the right in those phrases which he could not get in them as a trademark. But two difficulties arise which seem to me insurmountable. The plaintiff has no trademark right, because the device has not been used exclusively to denote his manufacture, and there is nothing about it which indicates that it was made by the plaintiff; and the special features cannot constitute such indication, as their value is destroyed as a mark of plaintiff's manufacture because not used exclusively in that connection. There can be no right to the exclusive use of those words or phrases, because they simply make statements of truth or fact. The statute gives a person a right to a form of advertising something of his own. Bill dismissed."

The decision is of value as being the only decision on this particular phase of this unique trademark statute, and because it holds that the designation of origin or ownership and a certain degree of originality are essential, even in a registered "form of advertisement." G. H. M.

CHOSES IN ACTION OF A BANKRUPT PASSING TO HIS ASSIGNEES. — The distribution of a bankrupt's property ratably among his creditors has always been a principal object of bankruptcy legislation. To effect this the statutes have aimed at giving the bankrupt's representatives control of all his valuable rights. By an early enactment the commissioners took what the bankrupt might "lawfully depart withal." 13 Eliza. c. 7. By 5 Geo. II. c. 30, the bankrupt yielded all rights whereby he "hath or . . . may . . . expect any profit, possibility of profit, benefit, or advantage whatsoever." Under such provisions, with the ancient admonition that the acts "shall be . . . largely and beneficially construed . . . for the aid, help, and relief of creditors," 21 Jac. I. c. 19, few valuable rights could be left to the bankrupt.

Nevertheless, apart from statutory exemptions, two kinds of choses in action have never been held to pass to the assignees. Rights deriving their value from future acts of the bankrupt remain to him, because, as Lord Mansfield remarked, "the assignees cannot let out the bankrupt." *Chipendall* v. *Tomlinson*, Cooke's Bankrupt Laws, 1st ed., 260. By a second qualification, based on principles analogous to the common law rules against maintenance, the bankrupt keeps rights of action for personal damages. *Benson* v. *Flower*, Sir W. Jones, 215; *In re Haensell*, 91 Fed. Rep. 355.

When one wrongful act injures both the person and the property of the bankrupt, there is considerable difficulty in applying these principles. If the damages arise *ex delicto*, apparently two actions can be brought, unless the result be greatly to harass the wrong-doer. *Brunsden* v. *Humphrey*, 14 Q. B. D. 141. In such a case a proper solution would be to allow one action to the assignee and one to the bankrupt. Yet for this no authority has been found except a *dictum* by Lord Bramwell in